
1997 Wis Eth Bd 19
LOBBYING AND LOBBYISTS

The Ethics Board advises:

- (1) If an individual contracts for or receives economic consideration (including stock or an option to acquire stock) from a company, attempts to influence legislation or rules on its behalf, and communicates with state officials, either orally or in writing, on five or more days in a reporting period in attempting to influence those officials, then Wisconsin's lobbying law will require the company to register as a lobbying principal and to authorize the individual to lobby on its behalf; and
- (2) An individual should not agree to lobby on behalf of a company if the individual's compensation is stock or a stock option, unless the individual is prepared to clearly and convincingly demonstrate that the value of the stock or the stock option is not *in any manner* dependent on the success or failure of legislative or administrative action. (November 13, 1997)

Facts

- ¶ 1. This opinion is based upon these understandings:
 - a. You have received a proposed consulting agreement from a Wisconsin company.
 - b. You have indicated that under the agreement you would provide both general business consulting as well as lobbying representation to the company.
 - c. Under the agreement, your compensation would consist of 50,000 shares of common stock, an option to buy an additional 50,000 shares at \$3.00 per share, and reimbursement of your expenses.

Questions

- ¶ 2. The Ethics Board understands your question to be:

How, if at all, does Wisconsin's lobbying law apply to the company, and to you, if you lobby on the company's behalf?

Discussion

¶ 3. Wisconsin’s lobbying law defines a “lobbyist” to include an individual who contracts for or receives economic consideration from a business and whose duties include attempting to influence legislation or administrative rules on the business’s behalf if the individual communicates on lobbying matters with state officials on five or more days in a six-month reporting period. §13.62, *Wisconsin Statutes*.¹ The stock and stock option are economic consideration. If you attempt to influence legislation or rules on the company’s behalf by communicating with state officials, either orally or in writing, on five or more days in a reporting period,² then the company will be required to register as a lobbying principal and to authorize you to lobby on its behalf.

¶ 4. We also note that §13.625(1)(d), *Wisconsin Statutes*, provides:

¹ Section 13.62(11), *Wisconsin Statutes*, provides:

13.62(11) “Lobbyist” means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of a principal. If an individual’s duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least 5 days within a reporting period.

Section 13.62(12), *Wisconsin Statutes*, provides:

13.62(12) “Principal” means any person who employs a lobbyist. If an association, corporation, limited liability company or partnership engages a lobbyist, an officer, employe, member, shareholder or partner of the association, corporation, limited liability company or partnership shall not be considered a principal.

Section 13.62(10), *Wisconsin Statutes*, provides:

13.62(10) “Lobbying” means the practice of attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employe, and includes time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs.

Section 13.62(10g), *Wisconsin Statutes*, provides:

13.62(10g) “Lobbying communication” means an oral or written communication with any agency official, elective state official or legislative employe that attempts to influence legislative or administrative action, unless exempted under s.13.621.

² Section 13.62(12r), *Wisconsin Statutes*, provides:

13.62(12r) “Reporting period” means any 6-month period beginning with January 1 and ending with June 30 or beginning with July 1 and ending with December 31.

13.625(1) No lobbyist may:

(d) Contract to receive or receive compensation dependent in any manner upon the success or failure of any legislative or administrative action.

This has been the law since 1858.³ If the value of your stock or stock option are *in any manner* dependent on the success or failure of any legislative or administrative action you should not agree to lobby on the company's behalf.

Advice

¶ 5. The Ethics Board advises:

(1) If you contract for or receive economic consideration (including stock or an option to acquire stock) from a company, attempt to influence legislation or rules on its behalf, and communicate with state officials, either orally or in writing, on five or more days in a reporting period in attempting to influence those officials, then Wisconsin's lobbying law will require the company to register as a lobbying principal and to authorize you to lobby on its behalf; and

(2) You should not agree to lobby on behalf of a company if your compensation is stock or a stock option, unless you are prepared to clearly and convincingly demonstrate that the value of the stock or the stock option is not *in any manner* dependent on the success or failure of legislative or administrative action.

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³ Chapter 145, Laws of 1858. In addition, the Wisconsin Supreme Court has held contracts to lobby, in which compensation is dependent on the success or failure of obtaining legislative action, to be against public policy and therefore unenforceable. *Houlton v. Nichol*, 93 Wis. 393 (1896); *Chippewa Valley & Superior Railway Co. v. Chicago, St. Paul, Minneapolis & Omaha Railway Co.*, 75 Wis. 224 (1889); *Bryan v. Reynolds*, 5 Wis. 200 (1856).